IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 242 of 2007()

CC.536/2004 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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PETITIONER: 7TH ACCUSED.

BINDHU PRASAD, C/O.PRASAD NAVEEN,
SUDARSAN, DIVISION NO. XL/4494, SHENOY'S LANE,
NEAR SUBASH AGENCY, T.D.ROAD, ERNAKULAM.

BY ADV. SRI.C.AJITH KUMAR (KALLESSERIL)
SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: COMPLAINANT AND STATE.

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1. SEBIA K.K. NOUFA MANZIL, CHENGALAM SOUTH
P.O. KOTTAYAM.

2. MONARCH CONCEPTS AND MARKETING PVT.LTD.,
2ND FLOOR, KALOOR TOWERS, KALOOR, KOCHI 17,
REPRESENTED BY ITS DIRECTOR, PRASAD NAVEEN,
SUDARSHAN, DIVISION NO. XL/4494, SHENOY'S LANE,
NEAR SUBASH AGENCY, T.D.ROAD, ERNAKULAM.

3. JOMY JOSEPH, FLAT NO. III-D, PRESIDENCY
COURT, CHAMMINI LANE, KALOOR, ERNAKULAM.

4. PRASAD NAVEEN, SUDARSAN,
DIVISION NO. XL/4494, SHENOYS LANE,
NEAR SUBASH AGENCY, T.D.ROAD, ERNAKULAM.

5. EAPPEN NINAN, CHAMMINIYODATHU HOUSE,
KALOOR, ERNAKULAM.

6. SILOO EAPEN, CHAMMINIYODATHU HOUSE,
KALOOR, ERNAKULAM.

7. LEA JOSEPH, C/O.JOMY JOSEPH,
FLAT NO. III-D, PRESIDENCY COURT,
CHAMMINI LANE, KALOOR, ERNAKULAM.

8. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R8 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 242 of 2007

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Dated this the 20th day of February, 2007

O R D E R

The petitioner is the 7th accused in a prosecution under Section 138 of the N.I. Act. The first respondent herein is the complainant. The first accused is a Private Limited Company. Accused 2 to 6 are the Directors of the company. The petitioner submits that except that she happens to be wife of the third accused, one Prasad Naveen, she has absolutely no connection with the company. In the notice of demand that was issued it has not even been alleged that the petitioner is a Director of the company, though the notice has been addressed to the petitioner also. In the complaint that is filed, there is an assertion that the petitioner is a Director and that she is also in charge of and manages the affairs of the first accused company.

2. The petitioner contends that she has absolutely nothing to do with the company. She is not one of its Directors. She is not the drawer of the cheque. She has not signed the cheque on behalf of the drawer, i.e. the first accused. She relies on a document produced as

Annex.C in support of her contention that she is not a Director of the first accused company.

3. The assertion that the petitioner is not a Director of the company and that she is in no way connected with the company remains uncontroverted. In the notice of demand there is no allegation, I repeat, that the petitioner is a Director of the company. In the complaint there is the following sweeping statements appearing in paragraph 1:

> "The first accused is a company and the accused 2 to 7 are its Directors. The accused 2 to 7 are in charge and managing the affairs of the 1st accused company."

There is absolutely nothing produced in support of this assertion. Annex.C document reveals that the petitioner is not a Director of the company. The complainant has not entered appearance before this Court to deny the specific assertion of fact that the petitioner/A7 has nothing to do with the company.

4. I am, in these circumstances, satisfied that this is a fit case where the powers under Section 482 Cr.P.C. can and ought to be invoked in favour of the petitioner. Under Section 141 of the Act, it must be shown that the petitioner is a Director and is in charge and responsible for the company for the conduct of its affairs. I am of the opinion that in the total

absence of a semblance of materials and in the light of the failure of the complainant to appear before this Court and controvert the specific assertions that this petition can be allowed and the petitioner can be saved of the undeserved trauma of this prosecution.

5. This Crl.M.C. is accordingly allowed. C.C.No. 536 of 2004 pending before the J.F.C.M -III, Kottayam in so far as it relates to the petitioner/A7 is hereby quashed.

(R. BASANT)
Judge

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